

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company
(U 39 M) for Authorization to Sell its Kern
Facility Pursuant to Public Utilities Code
Section 851 and Executive Order D-44-01.

Application 03-10-044
(Filed October 22, 2003)

**ADMINISTRATIVE LAW JUDGE'S RULING
REQUESTING ADDITIONAL INFORMATION**

On October 22, 2003 Pacific Gas and Electric (PG&E) filed its second application to sell its Kern Facility, a non-operating power plant, to North American Power Group (NAPG). In order for the Commission to determine the proper review or exemption under the California Environmental Quality Act (CEQA), the Commission needs more information about the planned uses of the Kern Facility.¹

Background

PG&E previously requested permission to sell the Kern Facility in Application (A.) 00-05-031, filed in May 2000. Subsequent to the filing of that application, Public Utilities Code section 377 was amended, and the Commission held that the amended statute barred the sale, and accordingly dismissed PG&E's application in Decision (D.) 01-04-004.

¹ The information requested may also be useful in determining whether the application meets the requirements of Public Utilities Code section 851 and Governor's Executive Order D-44-01.

In July 2001, Governor Gray Davis issued Executive Order D-44-01, which conditionally suspended section 377 to the extent it would prohibit the transfer of the Kern Facility to NAPG. In October 2001, the Commission issued D.01-10-002, which denied rehearing of D.01-04-004, closed the previous application proceeding, and directed PG&E to file a new application in compliance with the requirements of the Executive Order. PG&E subsequently filed the current application.

PG&E's Application

As filed, PG&E's application provides almost no information about NAPG's current plans for the Kern Facility.

In its current application, PG&E requests that the Commission continue to rely upon the CEQA exemption granted to PG&E in its prior application. (PG&E Application, p. 7.)² That exemption found that, under the Commission decision dismissing PG&E's application, the entity proposing to restart the plant (either PG&E or NAPG) would be required to obtain the approval of the California Energy Commission (CEC). Accordingly, PG&E's application qualified for a statutory CEQA exemption under Public Resources Code section 21080(b)(6) and CEQA Guideline 15271. In reaching this conclusion the Notice of Exemption assumed that PG&E or NAPG would be restarting a 140 MW thermal power plant, and that PG&E would be retaining ownership of the Kern Facility.

Commission Resolution E-3816, approving a power purchase agreement between NAPG and Southern California Edison (SCE), stated that the output to be sold under that contract would come from a "new biomass plant" to be

² The Notice of Exemption, dated April 11, 2001, is attached as Exhibit G to PG&E's Application.

constructed at the site of the Kern Facility.³ Based on the record, it appears that NAPG's plans for the Kern Facility do not correspond to those assumed by the Notice of Exemption.

More information is needed to determine whether a CEQA exemption is appropriate for this application. Accordingly, PG&E is ordered to provide the information identified below.⁴ After this information is received, a prehearing conference will be scheduled.

Prehearing Conference

In addition to the general topics, such as procedural schedules, that are typically discussed at prehearing conferences, parties should also be prepared to discuss the question of what evidence is necessary to determine whether the power purchase agreement between SCE and NAPG meets the requirements of Executive Order D-44-01, and particularly the requirement that such contracts be "on a cost-of-service basis." Parties should also be prepared to discuss the related issue of what information relating to the power purchase agreement should remain confidential.

Resolution E-3816 notes that: "Neither SCE nor NAPG has submitted to us any cost of service data concerning the Kern Power Plant, and approving the contract between NAPG and SCE should in no way be taken as a determination that the contract is a "cost-of-service" based contract for purposes of Executive Order D-44-01." (Resolution E-3816, p. 6.) A review of the contract itself

³ Resolution E-3816, dated May 8, 2003, is attached as Exhibit I to PG&E's Application.

⁴ PG&E will probably have to obtain some of this information from NAPG. However, Section 5.2(b)(ii) of the Purchase and Sale Agreement between PG&E and NAPG obligates NAPG to cooperate with PG&E in providing information and documentation to the CPUC. (See Attachment F to PG&E's Application.)

confirms that it does not provide any evidence of being cost-of-service based. Accordingly, other evidence, most likely in the possession of NAPG, will be necessary to determine compliance with the requirements of Executive Order D-44-01.

Anyone who needs assistance with participation in this proceeding should make use of the resources on the Commission's web site, www.cpuc.ca.gov, or should contact our Public Advisor's Office, which is available to help parties understand how to participate in a proceeding, how to file a pleading, and to answer other questions about Commission procedure. The northern California office can be reached at 415-703-2074 or public.advisor@cpuc.ca.gov. The southern California office can be reached at 213-576-7055 or public.advisor.la@cpuc.ca.gov.

IT IS RULED that:

1. PG&E shall file and serve a supplement to its Application within 20 days of the date of this ruling, containing the following information:

- a) The number and type of generating units that NAPG will be building and/or operating on the site of the Kern Facility.
- b) The capacity in megawatts of each of those units.
- c) The construction and operation dates for each of those units.
- d) The fuel or fuels that can or will be used in each of those units.
- e) Whether NAPG will seek approval for the project from the CEC.
- f) If CEC approval is not sought, the reasons why it is not required.
- g) Any other regulatory or governmental approvals that the project will require.
- h) A description of any demolition of facilities or structures that will occur on the site.

- i) A description of any construction of facilities or structures that will occur on or associated with the site.
2. After receipt of the supplement to the Application, a prehearing conference will be scheduled to discuss procedural and evidentiary issues, as described above.

Dated November 25, 2003, at San Francisco, California.

/s/ PETER V. ALLEN

Peter V. Allen
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling Requesting Additional Information on all parties of record in this proceeding or their attorneys of record.

Dated November 25, 2003, at San Francisco, California.

/s/ ELIZABETH LEWIS
Elizabeth Lewis

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.